(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other License Exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that reports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

[61 FR 64275, Dec. 4, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 55019, Oct. 14, 1998]

§ 740.7 Computers (CTP).

(a) *Scope.* License Exception CTP authorizes exports and reexports of computers and specially designed components therefor, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. (Related equipment controlled under 4A003.d and .g is authorized under this License Exception, only when exported or reexported with these computers as part of a system.) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a, .b and .c, *except* of parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of graphic accelerators or coprocessors, or of computers controlled for MT reasons.

(b) *Computer Tier 1.* (1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Bangladesh, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Czech Republic, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Finland, France, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St.

Lucia, St. Vincent and Grenadines, Sao Tome & Principe, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe. As of May 19, 2001, Lithuania is a Computer Tier 1 country.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 1 destinations are those having a Composite Theoretical Performance (CTP) greater than 6,500 Millions of Theoretical Operations Per Second (MTOPS).

(c) [Reserved]

(d) *Computer Tier 3*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, and Yugoslavia (Serbia and Montenegro), Federal Republic of, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen and Yugoslavia. As of May 19, 2001, Lithuania moves to Computer Tier 1.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 3 destinations are those having a CTP greater than 6,500 MTOPS, but less than or equal to 85,000 MTOPS, subject to the restrictions in paragraph (d)(3) of this section.

(3) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(4) *Supporting documentation.* Exporters are required to obtain a People's Republic of China (PRC) End-User Certificate before exporting computers described by paragraphs (d)(5)(i)(A) or (d)(5)(i)(B) of this section to the PRC, regardless of value. (See § 748.10(b)(3) of the EAR for information on obtaining the PRC End-User Certificate.) Exporters are required to provide the PRC End-User Certificate Number to BXA as part of their post-shipment report (see paragraph (d)(5)(v) of this section). When providing the PRC End-User Certificate Number to BXA, you must identify the transaction in the post shipment report to which that PRC End-User Certificate Number applies. The original PRC End-User Certificate shall be retained in the exporter's files in accordance with the recordkeeping provisions of § 762.2 of the EAR.

(5) *NDAA notification.* (i) *General requirement and procedures.* The National Defense Authorization Act (NDAA) of FY98 (Public Law 105–85, 111 Stat. 1629), enacted on November 18, 1997 requires advance notification of certain exports and reexports of computers to Computer Tier 3 countries. For each such transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form must be completed including all information required for a license application according to the instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box ''Other.'' This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) BXA will not initiate the registration of an

NDAA notice unless all information on the Multipurpose Application form is complete.

(A) *Prior to February 26, 2001*, advance notification is required for all exports and reexports of computers with a CTP greater than 12,500 but less than or equal to 85,000 MTOPS to Computer Tier 3 destinations. You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance the CTP of a previously exported or reexported computer beyond 12,500 MTOPS, but less than or equal to 85,000 MTOPS.

(B) *Beginning on February 26, 2001 but prior to March 20, 2001*, advanced notification is required for export and reexport of computers with a CTP greater than 28,000 MTOPS, but less than or equal to 85,000 MTOPS to Computer Tier 3 destinations. You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance the CTP of a previously exported or reexported computer beyond 28,000 MTOPS, but less than or equal to 85,000 MTOPS.

(ii) *Action by BXA.* Within 24 hours of the registration of the NDAA notice, BXA will refer the notice for interagency review. Registration is defined as the point at which the notice is entered into BXA's electronic system.

(iii) *Review by other departments or agencies.* The Departments of Defense, Energy, and State have the authority to review the NDAA notice. Objections by any department or agency must be received by the Secretary of Commerce within nine days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the NDAA notice. If, within 10 days after the date of registration, any reviewing agency provides a written objection to the export or reexport of a computer, License Exception CTP may not be used. In such cases, you will be notified that a license is required for the export or reexport. The NDAA notice will then be processed by BXA as a license application in accordance to the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. BXA may at this time request additional information to properly review the license application. If BXA confirms that no objection has been raised within the 10-day period (as described in paragraph (d)(5)(iv) of this section), you may proceed with the transaction on the eleventh day following date of registration. (Note that the fact that you have been advised to proceed with the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(iv) *Status of pending advance notification requests.* You must contact BXA's System for Tracking Export License Applications (''STELA'') at (202) 482–2752. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the NDAA notice. If no departments or agencies raise objections within the 10-day period, STELA will provide you on the eleventh day following date of registration with confirmation that no objections have been raised and you may proceed with the transaction. BXA will subsequently issue written confirmation to you. If a license is required, STELA will notify you that an objection has been raised and a license is required. The NDAA notice will be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (d)(5)(v), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule:

(*1*) For exports occurring prior to February 26, 2001, where the CTP is greater than 12,500 MTOPS; and

(*2*) For exports on or after February 26, 2001, but prior to March 20, 2001, where the CTP is greater than 28,000 MTOPS.

(B) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (d)(5)(v)(C) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) NDAA notification number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

NOTE TO PARAGRAPH (d)(5)(v)(B) OF THIS SECTION: For exports authorized under License Exception CTP to the People's Republic of China (PRC), you must submit the PRC End-User Certificate Number identifying the transaction for which the End-User Certificate Number applies.

(C) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (d)(5)(v) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(*1*) For deliveries by U.S. postal service: U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, D.C. 20044, Attn: Office of Enforcement Analysis HPC Team, Room 4065.

(*2*) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, 14th Street and Constitution Ave., NW, Room 4065, Washington, DC 20230.

(e) *Restrictions.* (1) *Access by certain foreign nationals.* Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) *Reexport and retransfers.* Computers eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(f) *Reporting requirements.* In addition to the reporting requirements set forth in paragraph (d) of this section, see §743.1 of the EAR for additional reporting requirements of certain items under License Exception CTP.

[66 FR 5444, Jan. 19, 2001; 66 FR 6465, Jan. 22, 2001, as amended at 66 FR 12847, Mar. 1, 2001]

§ 740.8 Key management infrastructure (KMI).

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible commodities and software.* (1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate ''License Exception KMI'' in block 9 on Form BXA–748P. Submit the original request to BXA in accordance with §748.3 of the EAR and send a copy of the request to:

Attn: KMI Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Fort Meade, MD 20755–6000.